

## **REMARKS**

### ***RCE***

This Amendment accompanies a Request for Continued Examination (RCE) and associated fee. Applicants believe that no additional fees are required. However, the Commissioner is authorized to charge our Deposit Account No. 08-2789 for any additional fees or credit the account for any overpayment.

### ***Claims***

Upon entry of this Amendment, claims 1, 5-6, 10-11, 29-31, 38-41, and 44-49 will be pending in the application with claims 1, 44, and 48 being independent. Claims 2-4, 7-9, 12-28, 32-37, and 42-43 have been previously canceled. Claims 1, 5-6, 10-11, 29-31, 38-41, and 44 are currently amended. Claims 45-49 have been added. Reconsideration is respectfully requested.

### ***Claim Rejections – 35 U.S.C. §103(a)***

After the decision from the Board of Patent Appeals and Interferences, claims 1, 6, 29-31, 38-41, and 44 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Manthrop et al. (U.S. Patent No. 5,916,217). Claim 5 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Manthrop et al. in view of Hair (U.S. Patent No. 6,197,037). Claims 10 and 11 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Manthrop et al. in view of Hair and in further view of Pohndorf et al. (U.S. Patent No. 5,904,683). Applicants have amended independent claims 1 and 44 to now recite limitations associated with an implant delivery device. Accordingly, Applicants believe the application is now in condition for allowance and respectfully traverses the rejections to independent claims 1 and 44.

Claim 1 now recites a system comprising a self-retaining implant 10 for attaching a bone cover 130 or a bone fragment 130 to a skull 140 and an implant delivery device 40 for driving the implant into the bone cover 130 or bone fragment

130. The implant 10 comprises a support element 12 having an upper side 18 and a lower side 20. An extension 14 extends substantially at a right angle from the lower side 20 of the support element 12 to an end remote from the support element 12 and substantially straight between the support element 12 and the end. At least one spike 16 extends substantially parallel to the support element 12 such that the spike 16 can be driven laterally into the bone cover 130 or bone fragment 130 prior to positioning the bone cover 130 or bone fragment 130 adjacent to the skull 140. The support element 12 further comprises two support arms 22, 24 extending in opposite directions from the extension with the first 22 of the two support arms defining a screw hole 26 therein for receiving a fastener 150 to secure the first support arm 22 to the skull 140 after the spike 16 has been driven laterally into the bone cover 130 or bone fragment 130 and after positioning the bone cover 130 or bone fragment 130 adjacent to the skull 140. The second 24 of the two support arms cooperates with the bone cover 130 or bone fragment 130 when driving the spike 16 into the bone cover 130 or bone fragment 130. The implant delivery device 40 is adapted to receive the implant 10 and apply a force to the implant 10 to drive the at least one spike 16 laterally into the bone cover 130 or bone fragment 130.

Claim 44 now recites a method of attaching the bone cover 130 or bone fragment 130 to the skull 140 with the implant 10 using the implant delivery device 40 to apply a force to the implant and drive the at least one spike 16 laterally into the bone cover 130 or bone fragment 130.

Manthrop et al. discloses an implant 110 for attaching a bone flap 16 to a skull 22. Referring to Figure 3, the implant 110 of Manthrop et al. comprises a support element having a flap clipping portion 112 and a skull clipping portion 118. An extension 124 extends downwardly from a lower side of the support element to a remote end. A pair of burrs 132 extends at an acute angle from the extension 124. In practice, multiple implants 110 are used to attach the bone flap 16 to the skull 22. In this process, each of the implants 110 of Manthrop et al. are first attached to the bone flap

16. To accomplish this, a screw 140 is secured to the bone flap 16 through a screw hole defined in the flap clipping portion 112. When secured, the burrs 132 protrude outwardly from the bone flap 16. Then, with the implants 110 secured to the bone flap 16, the bone flap 16 is pressed into an opening in the skull 22 and the burrs 132 engage the skull 22 in a “snap-fit” manner to hold the bone flap 16 in position. Manthrop et al. does not use an implant delivery device to apply a force to the implant and drive a spike laterally into a bone cover or bone fragment, as now required by claims 1 and 44. Thus, Manthrop et al. fails to disclose, teach, or suggest, all of the features required by claims 1 and 44. Applicant respectfully submits that dependent claims 5-6, 10-11, 29-31, 38-41, and 45-47 are also allowable based on their own merits, and their dependency to allowable claim 1.

Applicants have also added new independent claim 48 and dependent claim 49 and respectfully submit that these new claims are also allowable over Manthrop et al. for the reasons indicated above. Independent claim 48 recites an implant *for use with* an implant delivery device. Although not claiming the implant delivery device as a separate limitation, claim 48 recites that the implant itself has features configured for engaging the implant delivery device and being driven by the implant delivery device.

Applicants believe the application is now in condition for allowance, which allowance is respectfully solicited. Applicants believe that no additional fees are required. However, the Commissioner is authorized to charge our Deposit Account No. 08-2789 in the name of Howard & Howard Attorneys, PLLC for any additional fees or credit the account for any overpayment.

**Respectfully submitted,**

**HOWARD & HOWARD ATTORNEYS, PLLC**

**January 2, 2009**

**Date**

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